

APPLICANTS:
Dennis & Linda O'Brien

**REQUEST: Variance to allow a shed
within the required front yard setback
in the Agricultural District**

HEARING DATE: August 29, 2007

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS**

Case No. 5576

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Dennis F. O'Brien

Co-APPLICANT: Linda M. O'Brien

LOCATION: 1614 Carrs Mill Road, Land of Hutchins, Fallston
Tax Map: 48 / Grid: 2C / Parcel: 20 / Lot: 3
Third (3rd) Election District

ZONING: AG / Agricultural District

REQUEST: A variance, pursuant to Section 267-34C, Table II, of the Harford County Code, to allow a shed to be located within the required 50 foot front yard setback (2 foot setback proposed), in the AG/Agricultural District..

TESTIMONY AND EVIDENCE OF RECORD:

Dennis F. O'Brien, Co-Applicant, is the owner of an 8.64 acre lot located on 1614 Carrs Mill Road, Fallston, Maryland. The property is improved by a two-story dwelling with an attached, two-car garage. The parcel is a panhandle lot.

A storage shed had been located on the property for approximately two years before a complaint was made to the Department of Planning and Zoning in June 2005. The shed is placed almost directly on the common driveway line, which is shared by two other lots. (See Applicants' Exhibit No. 10) The shed is used for storage of snow removal equipment for the long driveway, as well as additional security for the residence, as it gives the appearance of a gatehouse. The property is unusual in that it is triangular-shaped and heavily wooded with mature trees. Winters Run runs across the back of the property.

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The property is also a Natural Resource District and contains a Forest Retention Area on the back of the property. The plat of the property (accepted as Applicants' Exhibit No. 6), clearly demonstrates the constraints of the property which limit the available area in which a structure can be erected.

Mr. O'Brien described the property in the rear and through photographs (accepted as Applicants' Exhibit No. 10), which show a steep downhill slope behind the home. The front of the property also has a steep driveway. Since the driveway to the house is steep, Mr. O'Brien testified that he needs the snow blower and salt in an easily accessible area. He also ran electricity to the shed to assist with starting the snow equipment. The location of the shed was the only flat place he could find on the property. This area was already cleared of trees.

The only other location for the shed was too close to his well and he was concerned about contamination due to the gas-powered snow removal equipment. The shed, which has the appearance of a gatehouse, provides lighting at the front of the residence since there is no public lighting. It serves as security for the area as it acts as a deterrent. The next closest home is 350 feet and the shed/gatehouse is not visible due to mature forest.

Mr. O'Brien testified that the area behind the home is topographically inappropriate to locate the shed. The rear of the home is very steep and it would be difficult to remove the snow equipment to utilize it on the steep driveway in the front of the home. If he were to relocate the shed, he would have to disturb the forest area and grade the area to make it flat for the shed. He felt that this would be detrimental to his property and would possibly negatively impact the Forest Retention Area and the Natural Resource District. If he was required to relocate the shed, the deterrent nature of the shed would be lost. He would also be unable to access his snow removal equipment for his steep driveway.

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Mr. O'Brien also testified that removal of the shed/gatehouse's present location does not have any adverse impact on the surrounding properties. The shed had been located at its present location for 24 months before a complaint was filed. The Applicant provided a Consent Order (accepted as Applicants' Exhibit No. 11), from the Circuit Court for Harford County, in Case No. 12-C-05-949. The Consent Order was entered into as a result of litigation between the Applicant and his neighbor that shares the common driveway. The Consent Order indicates the neighbor will use the shed for purposes of notice concerning the use and operation of dirt bikes and all-terrain vehicles. The neighbor also agreed that they will not have any objection to the placement of the shed or oppose any variances related to the shed.

Next for Harford County Department of Planning and Zoning testified Shane Grimm. Mr. Grimm and the Department are of the opinion that the property is not unique. The property is 8.64 acres in size. The panhandle to the lot is approximately 1,770 ± feet in length. The lot is part of a three lot subdivision that was recorded in 2001. Two other lots share the common driveway. The property contains steep slopes and is mostly wooded except for the area around the dwelling.

Mr. Grimm believes there are other areas where the shed could be located that would meet the required setbacks. The shed could be located in the rear of the home towards the woods. This would require grading of the property. He also felt the shed could be located near the basketball pole in the front of the property; however, that would also require grading (See photographs of property accepted as Applicants' Exhibit No. 10).

On cross-examination, Mr. Grimm acknowledged that the lot is a large, irregularly shaped lot. The driveway located in front of the home is steep. The rear of the home is also steep and backs up to a Forest Retention Area. He admitted that the present location of the shed/gatehouse has no adverse impact upon the surrounding properties. He was not aware of the location of the shed and its significance to the resolution of the lawsuit between the Applicant and his neighbor.

There was no evidence or testimony given in opposition.

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APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants reside on a property that is unique in that it is an isolated, heavily wooded, panhandle lot. The vegetation consists of heavy forests that obscure the view of the two other residences that share the common driveway. The location of the house is unusual because the majority of the lot, without the vegetation, sits to the rear of the house and has a deep slope.

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The driveway leading to the home is also steep. The Applicants make a convincing showing that their property is unique based upon the steepness of the driveway and the steep slope at the rear of the home, combined with the heavy forestation and the fact that this is a panhandle lot.

The Co-Applicant, Dennis F. O'Brien, and the representative from the Department of Planning and Zoning, both testified that there is no adverse impact on the surrounding properties by the location of the shed/gatehouse. The heavy forestation provides a buffer and obscures the view from any of the surrounding residences. In fact, the shed/gatehouse provides lighting in an area that is isolated and otherwise "pitch black", as described by the Applicant.

There is no question that the Applicants' property is unique. The situation faced by the Applicant is not normal for most panhandle lots as the home sits on the highest part of the lot with steep, downhill slopes in the front and rear. The question is whether this unusual circumstance causes an application of the Code which would create a difficult and unusual hardship on the Applicants.

The unique nature of the topography of this property and the existing vegetation make it difficult to locate the shed within the required setback. Since the property is a heavily wooded, panhandle lot with steep slopes in the front and rear of the home, the Applicants would need to grade the property and remove some of the forest. The unique nature of the property combined with a Consent Order from the Circuit Court for Harford County in Case No. 12-C-05-949 (Dennis F. O'Brien, et al. vs. Ronald Heim, et al.) cause an unusual hardship on the applicants if they were required to remove the shed. Applicants entered into litigation with his neighbor, Heims, over the use of ATV's, dirt bikes, etc. The parties entered into a Consent Order to resolve their dispute. The Order approved by the Circuit Court incorporates the present location of the shed into a requirement of notice to the parties regarding the use of the ATV's, etc. The Applicants' neighbors, Heims, agreed they would have no objection to the placement of the shed and would not oppose any zoning variances related to the shed. Clearly, if this variance was not granted, this would cause the Applicants' practical difficulty in their inability to comply with the Circuit Court Order.

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CONCLUSION:

It is, accordingly, found that the Applicants suffer from a unique condition which causes the Applicants practical difficulty. The practical difficulty is their inability to locate the shed on any other location on their property and their inability to comply with the Circuit Court Order. Their relief requested is the minimum necessary to alleviate the hardship. There is no finding of adverse impact as a result of the variance.

The Department of Planning and Zoning's position is noted. Although the Department is of the opinion that the shed could be located near the basketball pole or at the rear of the property, the photographs provided show that would require substantial grading and would also make it difficult for the Applicants to utilize his snow removal equipment for the steep driveway. The relocation to one of the proposed locations would also negatively impact the heavy vegetation as grading and tree removal would be necessary.

The Applicant testified convincingly that the proposed location of the shed is the most practical and the relocation of the shed to either of the locations proposed by the Department of Planning and Zoning would present the Applicants with an unnecessary hardship. Relocating the shed would remove the lights at the end of the driveway and create a security concern, necessitate grading the property and tree removal, which would negatively impact the Forest Retention Area and Natural Resource District. The removal of the shed would also eliminate its function in providing easy access to snow removal equipment and violate an existing Circuit Court Order.

It is, accordingly, recommended that the requested variance be granted, subject to the Applicants obtaining all necessary permits for the shed.

Date October 1, 2007

Michael H. Daney
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on October 29, 2007.